

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 13, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CAMERON B.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,¹

Defendant.

No. 1:21-CV-03031-JAG

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 17, 18. Attorney D. James Tree represents Cameron B. (Plaintiff); Special Assistant United States Attorney Justin Martin represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge by operation of Local Magistrate Judge Rule (LMJR) 2(b)(2) as no party returned a Declination of Consent Form to the Clerk's Office by the established deadline. *See* ECF No. 21. After reviewing the administrative record

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for
2 Summary Judgment and denies Plaintiff's Motion for Summary Judgment.

3 **I. JURISDICTION**

4 Plaintiff filed an application for Supplemental Security Income on February
5 22, 2016, alleging disability since September 22, 1998, due to depression, mental
6 health issues, not liking being around people, anxiety, antisocial personality, and
7 PTSD. Tr. 90-91. The application was denied initially and upon reconsideration.
8 Tr. 139-47, 151-61. Administrative Law Judge (ALJ) Ilene Sloan held a hearing
9 on February 6, 2018, Tr. 34-57, and issued an unfavorable decision on June 26,
10 2018, Tr. 118-27. Plaintiff requested review of the ALJ's decision, and the
11 Appeals Council remanded the claim on June 22, 2019. Tr. 132-35.

12 ALJ Chris Stuber held a remand hearing on July 16, 2020, Tr. 58-88, and
13 issued another unfavorable decision on August 14, 2020. Tr. 15-27. Plaintiff
14 requested review of the ALJ's decision by the Appeals Council and the Appeals
15 Council denied the request for review on January 5, 2021. Tr. 1-5. The ALJ's
16 August 2020 decision is the final decision of the Commissioner, which is
17 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
18 action for judicial review on March 1, 2021. ECF No. 1.

19 **II. STATEMENT OF FACTS**

20 Plaintiff was born in 1984 and was 31 years old when he filed his
21 application. Tr. 25. He obtained his GED but has a minimal work history due to
22 being incarcerated for much of his life. Tr. 39-40. He has reported extreme
23 difficulty getting along with others and has found it difficult to adjust to life
24 outside of institutions. Tr. 48-49, 70-71, 78-80, 445, 465, 478.

25 **III. STANDARD OF REVIEW**

26 The ALJ is responsible for determining credibility, resolving conflicts in
27 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
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1 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
 2 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
 3 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
 4 only if it is not supported by substantial evidence or if it is based on legal error.
 5 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
 6 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
 7 1098. Put another way, substantial evidence is such relevant evidence as a
 8 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
 9 *Perales*, 402 U.S. 389, 401 (1971).

10 If the evidence is susceptible to more than one rational interpretation, the
 11 Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at
 12 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir.
 13 1999). If substantial evidence supports the administrative findings, or if
 14 conflicting evidence supports a finding of either disability or non-disability, the
 15 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230
 16 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
 17 set aside if the proper legal standards were not applied in weighing the evidence
 18 and making the decision. *Browner v. Secretary of Health and Human Services*,
 19 839 F.2d 432, 433 (9th Cir. 1988).

20 IV. SEQUENTIAL EVALUATION PROCESS

21 The Commissioner has established a five-step sequential evaluation process
 22 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
 23 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant
 24 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d
 25 at 1098-1099. This burden is met once a claimant establishes that a physical or
 26 mental impairment prevents the claimant from engaging in past relevant work. 20
 27 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ
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1 proceeds to step five, and the burden shifts to the Commissioner to show: (1) the
2 claimant can make an adjustment to other work; and (2) the claimant can perform
3 specific jobs that exist in the national economy. *Batson v. Commissioner of Social*
4 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (9th Cir. 2004). If a claimant cannot make
5 an adjustment to other work in the national economy, the claimant will be found
6 disabled. 20 C.F.R. § 416.920(a)(4)(v).

7 V. ADMINISTRATIVE FINDINGS

8 On August 14, 2020, the ALJ issued a decision finding Plaintiff was not
9 disabled as defined in the Social Security Act. Tr. 15-27.

10 At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful
11 activity since the application date. Tr. 17.

12 At *step two*, the ALJ determined Plaintiff had the following severe
13 impairments: antisocial disorder, methamphetamine abuse, PTSD, ADHD, major
14 depressive disorder, intermittent explosive disorder, and right tibial fracture, status
15 post open reduction internal fixation surgery. Tr. 17-18.

16 At *step three*, the ALJ found Plaintiff did not have an impairment or
17 combination of impairments that met or medically equaled the severity of one of
18 the listed impairments. Tr. 18-19.

19 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
20 he could perform sedentary work, with the following limitations:

21 [A]ble to lift and/or carry 10 pounds occasionally and less than
22 10 pounds frequently. He can stand and/or walk about 2 hours in
23 an 8-hour workday and can sit about 6 hours. He can occasionally
24 climb ramps and stairs but never ladders, ropes, or scaffolds. He
25 can have only occasional exposure to excessive vibrations. He is
26 able to understand, remember, and carryout simple, routine
27 instructions with only occasional changes in the workplace. He
28 should have no interactions with the public and brief and
superficial interactions with coworkers and supervisors.

1 Tr. 19-20.

2 At *step four*, the ALJ found Plaintiff had no past relevant work. Tr. 25.

3 At *step five* the ALJ found that, considering Plaintiff's age, education, work
4 experience, and residual functional capacity, Plaintiff could perform jobs that
5 existed in significant numbers in the national economy, specifically identifying the
6 representative occupations of final assembler, document preparer, and addressor.

7 Tr. 26.

8 The ALJ thus concluded Plaintiff was not under a disability within the
9 meaning of the Social Security Act at any time from the date the application was
10 filed through the date of the decision. Tr. 27.

11 VI. ISSUES

12 The question presented is whether substantial evidence supports the ALJ's
13 decision denying benefits and, if so, whether that decision is based on proper legal
14 standards.

15 Plaintiff contends the Commissioner erred by: (1) improperly discounting
16 Plaintiff's subjective symptom testimony; and (2) improperly rejecting the medical
17 opinions. Defendant contends the ALJ's decision is supported by substantial
18 evidence.

19 VII. DISCUSSION

20 A. Medical Opinions.

21 Plaintiff argues the ALJ erred in evaluating the medical opinion evidence
22 from Drs. Genthe, Cline, and Bowes. ECF No. 17 at 12-19.

23 When a treating or examining physician's opinion is contradicted by another
24 physician, the ALJ may reject the opinion by offering "specific and legitimate
25 reasons" based on substantial evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1041
26 (9th Cir. 1995); *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). The
27 specific and legitimate standard can be met by the ALJ setting out a detailed and
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1 thorough summary of the facts and conflicting clinical evidence, stating their
2 interpretation thereof, and making findings. *Magallanes v. Bowen*, 881 F.2d 747,
3 751 (9th Cir. 1989).

4 **1. Dr. Thomas Genthe.**

5 In July 2016 Plaintiff attended a consultative psychological exam with Dr.
6 Genthe. Tr. 483-88. Dr. Genthe noted diagnoses of antisocial personality disorder,
7 intermittent explosive disorder, attention deficit hyperactivity disorder, major
8 depressive disorder, cannabis use disorder, and child sexual abuse (Level 3 sexual
9 offender). Tr. 486-87. Dr. Genthe concluded Plaintiff was unimpaired in many
10 areas and that cognitively he was able to maintain a regular schedule and complete
11 a normal workweek; however, he found that Plaintiff's social functioning was
12 poor, including his ability to interact appropriately with the public, ask questions
13 and accept instructions, get along with coworkers or peers, respond appropriately
14 to criticism from supervisors, and adhere to basic standards of neatness and
15 cleanliness. Tr. 487. Dr. Genthe stated Plaintiff was likely to function best in
16 settings that would not require his having to deal with a large number of coworkers
17 or consumers on an ongoing basis. *Id.* He further noted that Plaintiff's prognosis
18 was guarded, that he was unlikely to function adequately in a work setting until his
19 mental symptoms were managed more effectively, and that he would require a
20 period of no less than nine months to address his treatment needs at least
21 moderately well. *Id.*

22 The ALJ summarized this opinion as follows:

23 [Dr. Genthe] opined that the claimant is likely to function best in
24 setting that would not require him to deal with a large number of
25 coworkers and/or consumers on an ongoing basis. He determined
26 the claimant is able to maintain a regular work schedule and
27 complete a normal workweek.
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1 Tr. 24. The ALJ went on to give this opinion partial weight, noting the assessed
2 duration of nine months did not meet agency regulations, and that the opinion was
3 rendered early in the relevant period, meaning Dr. Genthe reviewed minimal
4 records and did not comment on the entire relevant period. *Id.* The ALJ further
5 found that the opinion did offer insight into Plaintiff's functioning, supporting that
6 he was less limited than alleged. *Id.*

7 Plaintiff argues the ALJ erred in taking Dr. Genthe's statements out of
8 context and ignoring the ultimate conclusion that Plaintiff was unable to work until
9 his symptoms were better managed. ECF No. 17 at 16-18. Plaintiff further asserts
10 that the opinion as a whole does not support the ALJ's finding that Plaintiff is less
11 limited than alleged, and asserts that Dr. Genthe's opinion is consistent with the
12 opinions from the other evaluating psychologists. *Id.* Defendant argues the ALJ
13 reasonably gave the opinion less weight due to it not meeting the duration
14 requirement and due to Dr. Genthe being unaware of Plaintiff's full diagnostic
15 picture due to not reviewing most of the record. ECF No. 18 at 11-13.

16 The Court finds that the ALJ reasonably weighed conflicting opinions,
17 compared the opinions to the record, and made reasonable conclusions as to the
18 weight of conflicting medical opinions. The ALJ's adoption of some, but not all,
19 of Dr. Genthe's findings is consistent with the partial weight afforded to Dr.
20 Genthe's opinion. Dr. Genthe stated that Plaintiff was able to maintain a regular
21 workweek with limitations that Dr. Genthe indicated may improve with continued
22 treatment. The ALJ incorporated limitations based on social function into the
23 residual functional capacity. The ALJ's conclusion that the opinion supports that
24 Plaintiff is less limited than alleged is supported by substantial evidence.
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1 **2. Dr. R.A. Cline.**

2 Plaintiff attended a consultative psychological exam with Dr. R.A. Cline in
3 March 2016. Tr. 478-82. Dr. Cline diagnosed Plaintiff with antisocial personality
4 disorder with some features of narcissistic personality disorder, PTSD, marijuana
5 use disorder, and rule out depressive disorder. Tr. 480. She opined Plaintiff had
6 mostly mild to moderate limitations in work-related functioning, but that he was
7 markedly limited in completing a normal workday and workweek without
8 interruptions from psychologically-based symptoms and in setting realistic goals
9 and planning independently; and was severely limited in communicating and
10 performing effectively in a work setting and maintaining appropriate behavior in a
11 work setting. Tr. 480-81. She further stated that these limitations would last for
12 6-12 months with available treatment, and noted that Plaintiff would be difficult to
13 treat in a therapeutic context due to his attitude and personality disorders. Tr. 481.

14 The ALJ gave this opinion little weight, noting the anticipated duration did
15 not necessarily meet the durational requirement, and that the doctor did not review
16 any records, failed to attach all testing documentation, and provided little to no
17 explanation for her assessed limitations. Tr. 25. The ALJ further found the
18 opinion to be inconsistent with Plaintiff's presentation during the exam and to be
19 inconsistent with Plaintiff's benign presentation in treatment records, his
20 performance at other mental exams, his responsiveness to minimal treatment, and
21 situational stressors influencing his symptoms. *Id.*

22 Plaintiff argues the ALJ's analysis is insufficient, as Dr. Cline supported her
23 opinion with observations about Plaintiff's behavior during the exam and that the
24 various findings reasonably corresponded with the assessed limitations. ECF
25 No. 17 at 12-16. Defendant argues the ALJ's rationale was reasonable and the
26 factors he considered were all relevant to the weighing of Dr. Cline's opinion.
27 ECF No. 18 at 13-15.

1 The Court finds the ALJ's rationale is supported by substantial evidence.
2 With respect to duration, Dr. Cline offered a range from six to twelve months; only
3 the extreme upper end of the range meets the regulatory durational requirement.
4 Further, the ALJ noted that Dr. Cline's opinion appeared inconsistent with
5 Plaintiff's presentation during the examination. Tr. 25. The ALJ pointed to Dr.
6 Cline's failure to review the records and failure to address responsiveness to
7 treatment and the effect of situational stressors. *Id.*

8 The record contains a mix of abnormal and normal mental status exam
9 results and the Court finds the ALJ's characterization of Plaintiff's general
10 presentation as "relatively benign" is supported by the record. Though he at times
11 presented as tense, agitated, oppositional to treatment, depressed, or anxious,
12 Tr. 449-53, 474, 486, 506, 588, 608, 670, 770-71, 798, 803, 832-35, 840, 858, at
13 other times providers noted that he presented as open, cooperative, and genuine,
14 Tr. 447-48, 464, 485, 493, 504-05, 515, 524, 544, 556, 566.

15 The Court finds the ALJ offered specific and legitimate reasons for
16 discounting Dr. Cline's opinion.

17 **3. Dr. Tasmyn Bowes.**

18 Plaintiff attended a third consultative psychological exam with Dr. Bowes in
19 May 2018. Tr. 766-71. Dr. Bowes diagnosed Plaintiff with antisocial personality
20 disorder, PTSD, and persistent depressive disorder, and opined he had marked and
21 severe limitations in multiple areas of work-related functioning. Tr. 768-69.

22 The ALJ gave this opinion no weight, noting she reviewed no records and
23 that her opinion appeared to be an outlier among the rest. Tr. 25. He additionally
24 found the opinion to be inconsistent with the same factors as he addressed with
25 respect to Plaintiff's subjective statements and Dr. Cline's opinion. *Id.*

26 The ALJ's characterization of Dr. Bowes' opinion as an outlier compared to
27 other opinions issued by similarly qualified individuals, in addition to Dr. Bowes's
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1 failure to review the record, constitutes substantial evidence. In the face of
2 contrary opinion, the ALJ must afford some opinions more weight than others.
3 Siding with the weight of authority reasonably accounts for the record and the
4 expertise of those opinions.

5 The Court finds the ALJ offered specific and legitimate reasons to give Dr.
6 Bowes' opinion no weight.

7 **B. Plaintiff's Subjective Statements**

8 Plaintiff contends the ALJ erred by improperly rejecting his subjective
9 complaints. ECF No. 17 at 9-12.

10 It is the province of the ALJ to make determinations regarding a claimant's
11 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
12 The ALJ's findings, however, must be supported by specific, cogent reasons.
13 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant
14 produces medical evidence of an underlying medical impairment, the ALJ may not
15 discredit testimony as to the severity of an impairment merely because it is
16 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
17 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting
18 the claimant's testimony must be "specific, clear and convincing." *Smolen v.*
19 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834
20 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must identify
21 what testimony is not credible and what evidence undermines the claimant's
22 complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
23 1993).

24 The ALJ concluded Plaintiff's medically determinable impairments could
25 reasonably be expected to cause the alleged symptoms; however, Plaintiff's
26 statements concerning the intensity, persistence and limiting effects of those
27 symptoms were not entirely consistent with the medical evidence and other
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1 evidence in the record. Tr. 21. The ALJ found Plaintiff's complaints were not
 2 supported by the objective records, that there was little evidence of ongoing
 3 treatment (and that Plaintiff responded to what little treatment he did receive), that
 4 there was a situational component to Plaintiff's mental condition, and that
 5 discrepancies in the record detracted from his self-reports. Tr. 21-24.

6 The ALJ painstakingly reviewed Plaintiff's statements—both during the
 7 hearing, and throughout the record. Tr. 20–24. The ALJ cited to a series of
 8 inconsistencies in Plaintiff's self-reports both as compared to Plaintiff's own
 9 statements and the medical documentation. *Id.* The ALJ also noted that situational
 10 trauma figured into Plaintiff's more severe reports. Tr. 23. The ALJ's
 11 conclusions are supported by substantial evidence.

12 **VIII. CONCLUSION**

13 Having reviewed the record and the ALJ's findings, the Court concludes the
 14 ALJ's decision is supported by substantial evidence and is not based on legal error.
 15 Accordingly, **IT IS ORDERED:**

- 16 1. Plaintiff's Motion for Summary Judgment, ECF No. 17, is **DENIED**.
- 17 2. Defendant's Motion for Summary Judgment, ECF No. 18, is
- 18 **GRANTED.**

19 The District Court Executive is directed to file this Order and provide a copy
 20 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
 21 and the file shall be **CLOSED**.

22 DATED March 13, 2023.



James A. Goetze
 JAMES A. GOEKE
 UNITED STATES MAGISTRATE JUDGE